

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)Nos.4398 and 4399 of 2014

B.J. Bikram Singh

... Petitioner in both the revisions

vs

Heena K. Adroja

... Respondent in both the revisions

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order passed in I.A.Nos.1177 and 1178 of 2014 in O.P.No.1736 of 2003 dated 14.7.2014 on the file of III Additional Family Court, Chennai.

For Petitioner : Ms.K. Sumathi

For respondent : Mr.B.S. Jhothiraman

COMMON ORDER

Challenging the fair and final orders passed in I.A.Nos.1177 and 1178 of 2014 in O.P.No.1736 of 2003 on the file of III Additional Family Court,

Chennai, the petitioner, who is the husband of the respondent, has filed the above Civil Revision Petitions.

2. Since similar facts and circumstances are involved in both the Civil Revision Petitions, they are disposed of by this Common Order.

3. In the year 2003, the petitioner filed an Original Petition in O.P.No.1736 of 2003 for divorce on the ground of cruelty. The respondent filed her counter and is contesting the matter. The Family Court took up the matter for trial and the evidence of P.W.1 was completed in the year 2010.

4. In the year 2012, the respondent filed an Original Petition in O.P.No.3041 of 2012 for restitution of conjugal rights. Thereafter, in the year 2014, the respondent filed applications in I.A.No.1177 and 1178 of 2014 to reopen and recall P.W.1 for further cross examination. In the affidavit, filed in support of the petitions, the respondent has stated that certain crucial allegations, levelled in the reply statement, were not adverted to in the cross examination by oversight. On this ground, the respondent filed applications to reopen and recall P.W.1 for further examination. The respondent has also stated that in the Original Petition in O.P.No.3041 of 2012, she filed her proof affidavit on 11.3.2014 and when the said Original

Petition is posted for continuation of the evidence, the Family Court had taken up the Original Petition in O.P.No.1736 of 2003 for arguments.

5. The applications, filed by the respondent, were stoutly contested by the petitioner, stating that the applications, filed by the respondent, cannot be allowed, for the reason that the evidence of P.W.1 was completed in the year 2010 itself and that, the Original petition, filed in the year 2003, is still pending, even after a lapse of 12 years.

6. The Family Court allowed the applications, finding that another opportunity should be afforded to the respondent.

7. When the petition was filed in the year 2003 and P.W.1 was examined in the year 2010, the present applications, filed by the respondent, to reopen and recall P.W.1 for further cross examination, were at a belated stage. The respondent has not shown due diligence in prosecuting the matter in a proper manner.

8. That apart, in the affidavit filed in support of the petition, the respondent has stated that by oversight, some questions were omitted to put to P.W.1 and therefore, further cross examination is required.

9. The Hon'ble Supreme Court in the judgment reported in **2009 (4) SCC 410 (Vadiraj Naggappa Vernekar (dead) through LRs vs Sharadchandra Prabhakar Gogate)**, wherein the Apex Court has held that a witness can be recalled for further examination to enable the Court to clarify any doubts that may have arisen during the course of his examination. The parties, seeking to introduce evidence, by recalling of witness, which was available at the time his affidavit, was prepared and that only after cross examination of the witness that certain lapses in his evidence, were noticed. In these circumstances, the petition to recall the witness cannot be allowed.

10. Following the judgment laid down by the Apex Court, this Court in **2015(2) MWN (civil) 253 (Rajeswari vs Govinidaraj)** held that the application to reopen and recall witnesses can be done only for clarifying any ambiguity in evidence and such power cannot be utilised to fill up lacuna.

11. In the case on hand, the respondent herself has stated that due to oversight, some questions were not put to the witness and therefore, P.W.1 should be recalled.

12. The reasoning given by the respondent for recalling P.W.1 is against the ratio laid down in the above referred judgments. The conduct of the respondent would clearly establish that the present applications have been filed only to drag on the proceedings. The recalling of witness, after a lapse of five years, cannot be allowed. The ratio laid down in the above referred judgments, squarely applies to the facts and circumstances of the present case.

13. In these circumstances, the fair and final orders passed in 1177 and 1178 of 2014 in O.P.No.1736 of 2003 by the III Additional Family Court, Chennai are set aside and both the Civil Revision Petitions are allowed. No costs.

14. Since the Original Petition is pending from 2003, I direct the III Additional Family Judge, Chennai to dispose of the Original Petition in O.P.No.1736 of 2003, on merits and in accordance with law, within a period of two months from the date of receipt of copy of this order.

10-07-2015

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Index:no
website:yes

M.DURAISWAMY,J.,

sr

To

The III Additional Family Court, Chennai

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10-07-2015